

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SAM MAIDA
Plaintiff,

v.

NATIONWIDE GENERAL INSURANCE
COMPANY AND PAUL RHINES
Defendants.

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CIVIL ACTION NO. 4:16-cv-1812

NOTICE OF REMOVAL

Defendants, Nationwide General Insurance Company and Paul Rhines (“Defendants”), through undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, file this Notice of Removal of the lawsuit captioned *Sam Maida v. Nationwide General Insurance Company and Paul Rhines*; Cause No. 16-DCV-232475, in the 400th Judicial District of Fort Bend County, Texas.

**I.
BACKGROUND**

1. Plaintiff Sam Maida (hereinafter “Plaintiff”) initiated the present action by filing his Original Petition in Cause No. 16-DCV-232475, in the 400th Judicial District of Fort Bend County, Texas on May 18, 2016 (the “State Court Action”). *See* Plaintiff’s Original Petition, attached as **Exhibit A**.

2. Defendants appeared and answered on June 23, 2016, asserting a general denial to the claims and allegations made in Plaintiff’s Original Petition. *See* Defendants’ Original Answer, attached as **Exhibit B**.

3. Pursuant to 28 USC § 1446(a) and Local Rule 81, a copy of all process, pleadings, and orders served upon Defendants in the State Court Action and not otherwise specifically identified as separate exhibits have been requested and will be filed upon receipt.

4. Pursuant to 28 U.S.C. § 1446(d), promptly after filing this Notice of Removal, Defendants will give written notice of the removal to Plaintiff through his attorney of record, and to the clerk of the 400th Judicial District of Fort Bend County, Texas.

5. Pursuant to 28 USC §§ 1446(b)(1) and 1446(c)(1) this Notice of Removal has been timely filed within 30 days of service on Defendants of Plaintiff's Original Petition and less than one year after the commencement of this action.

II. JURISDICTION

6. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and the matter is removable to this Court pursuant to 28 U.S.C. § 1441(a) because there is complete diversity of citizenship between the properly joined parties and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

A. Diversity of Parties

7. Plaintiff is domiciled in Fort Bend County, Texas. *See Exhibit A, ¶ 2.* Pursuant to 28 U.S.C. § 1332(a), therefore, Plaintiff is a citizen of the State of Texas.

8. Nationwide General Insurance Company is organized under the laws of Ohio and maintains its principal place of business in Ohio. Pursuant to 28 U.S.C. § 1332(c)(1), therefore, Nationwide General Insurance Company is a citizen of the State of Ohio.

9. Defendant Paul Rhines is domiciled in Johnson County, Kansas, and is therefore a citizen of the State of Kansas. Plaintiff has pled that Paul Rhines "is an individual residing in Fort

Bend County, Texas and may be served with process at the following address: 4926 Ballentine St., Shawnee, Kansas 66203-1688.” To the extent that Plaintiff’s pleading is not a typographical error, Plaintiff has fraudulently pled that Rhines resides in Texas.¹ Nonetheless it is not Rhine’s current residence that controls; rather it is his domicile.²

10. Accordingly, there is complete diversity between the parties pursuant to 28 U.S.C. § 1332(a).

B. Amount in Controversy

11. Plaintiff’s Original Petition states that Plaintiff seeks “between \$200,000 and \$1,000,000, excluding interest and costs.” See Plaintiff’s Original Petition, **Exhibit A**, ¶ 5. The threshold for diversity jurisdiction, \$75,000, is therefore met by the allegations of Plaintiff’s Original Petition.

12. Plaintiff further seeks compensation for (1) actual damages, (2) treble damages, (3) 18% penalty interest attorney’s fees, (4) mental anguish damages, (6) pre and post-judgment interest, and (7) attorney’s fees. See **Exhibit A**, ¶¶ 56-61. Plaintiff has alleged that Defendant’s conduct was wrongful and done knowingly, entitling him to a trebling of actual damages under Texas Insurance Code Chapter 541. See **Exhibit A**, ¶ 54; Tex. Ins. Code sections 541.002 & 541.152.

¹ *Int’l Energy Ventures Mgmt., L.L.C. v. United Energy Grp., Ltd.*, 818 F.3d 193, 199 (5th Cir. 2016) (A defendant is improperly joined if the moving party establishes that (1) the plaintiff has stated a claim against a diverse defendant that he fraudulently alleges is nondiverse, or (2) the plaintiff has not stated a claim against a defendant that he properly alleges is nondiverse.)

² *Mas v. Perry*, 489 F.2d 1396, 1399 (5th Cir. 1974) (For diversity purposes, citizenship means domicile; mere residence in the State is not sufficient).

Penalties, exemplary damages, and attorneys' fees are included as part of the amount in controversy.³

13. The amount in controversy plainly exceeds \$75,000, exclusive of interest and costs. *See Exhibit A.* Accordingly, the amount in controversy requirement of 28 U.S.C. § 1332(b) is satisfied.

III. CONCLUSION

14. Removal of this action under 28 U.S.C. § 1441(b) is proper as the district courts of the United States have original jurisdiction over the matter pursuant to 28 U.S.C. 1332, and as all requirements for removal under 28 U.S.C. § 1446 have been met.

15. WHEREFORE, Defendants Nationwide General Insurance Company and Paul Rhines hereby provide notice that this action is duly removed.

Respectfully submitted,

/s/ Patrick M. Kemp

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**ATTORNEY-IN-CHARGE FOR
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INSURANCE COMPANY AND PAUL RHINES**

³ See *H&D Tire & Automotive-Hardware, Inc. v. Pitney Bowes Inc.*, 227 F.3d 326, 330 (5th Cir. 2000); see also *St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998).

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served upon the following counsel of record via certified mail/return receipt requested on this 23rd day of June, 2016:

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/s/ Patrick M. Kemp
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